



## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

**[Docket No. PL24-1-000]**

#### **Project-Area Wage Standards in the Labor Cost Component of Cost-of-Service Rates**

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Proposed policy statement.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to clarify how the Commission will treat the use of project-area wage standards in calculating the labor cost component of jurisdictional cost-of-service rates.

**DATES:** Comments on this proposed policy statement are due on or before

**[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].**

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways. Electronic filing through <https://www.ferc.gov>, is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
  - Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE, Washington, DC 20426.
  - Hand (including courier) delivery: Deliver to: Federal Energy Regulatory

The Comment Procedures Section of this document contains more detailed filing procedures.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Proposal**

1. In this proposed policy statement, we clarify how the Commission will treat the use of project-area wage standards in calculating the labor cost component of cost-of-service rates, including under Natural Gas Act (NGA) sections 4, 5, and 7, 15 U.S.C. 717c-d, 717f; the Interstate Commerce Act (ICA), 49 U.S.C. app. 1(5)(a); and Federal Power Act (FPA) sections 205 and 206, 16 U.S.C. 824d-e.<sup>1</sup>
2. Project-area wage standards are the prevailing wages set by labor markets in the locale where the associated project work (e.g., construction, capital repairs, decommissioning) is performed. They can be found in data sources that indicate the

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<sup>1</sup> While most interstate oil pipelines have market-based or indexed rates, some jurisdictional pipelines have cost-of-service rates on file with the Commission.

basic hourly wage rates and fringe benefit rates for labor, direct employees and/or contract personnel that prevail in a predetermined geographic area. For example, under the Davis-Bacon Act, the U.S. Department of Labor issues prevailing wage determinations based on periodic surveys of union and non-union wages paid in a particular location, which serve as the minimum wage that must be paid by contractors and subcontractors performing under certain federally funded or assisted construction contracts.<sup>2</sup> A number of states have enacted their own prevailing wage laws, sometimes referred to as “Little Davis-Bacon” laws.<sup>3</sup>

3. The Commission addressed the treatment of project-area wage rates in the cost component of natural gas pipeline cost-of-service rates in Opinion Nos. 510 and 524.<sup>4</sup> In Opinion No. 510, the Commission rejected a pipeline operator’s proposal to use union-only wage rates from a single proxy location to estimate the labor cost of decommissioning its pipeline that spanned four states,<sup>5</sup> finding that the pipeline operator

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<sup>2</sup> “By requiring the payment of minimum prevailing wages, Congress sought to ‘ensure that Government construction and federally assisted construction would not be conducted at the expense of depressing local wage standards.’” Dep’t of Labor, *Updating the Davis-Bacon & Related Acts Reguls.*, 88 FR 57526, 57526 (Aug. 23, 2023) (citing Determination of Wage Rates Under the Davis-Bacon & Serv. Cont. Acts 5 Op. O.L.C. 174, 176 (1981)) (Final Rule).

<sup>3</sup> Dep’t of Labor, *Dollar Threshold Amount for Contract Coverage under State Prevailing Wage Laws* (Jan. 1, 2023), <https://www.dol.gov/agencies/whd/state/prevailing-wages>.

<sup>4</sup> *Portland Nat. Gas Transmission Sys.*, Opinion No. 510, 134 FERC ¶ 61,129 (2011), *reh’g in part*, 142 FERC ¶ 61,198 (2013), *reh’g dismissed*, 150 FERC ¶ 61,106 (2015); *Portland Nat. Gas Transmission Sys.*, Opinion No. 524, 142 FERC ¶ 61,197 (2013), *reh’g denied*, 150 FERC ¶ 61,107 (2015). Among other things, these proceedings involved estimating the expected costs for future pipeline retirements, specifically, determining the labor component for decommissioning costs to be recovered by a pipeline operator, Portland Natural Gas Transmission System.

<sup>5</sup> Opinion No. 510, 134 FERC ¶ 61,129 at P 124.

had not carried its burden under section 4 of the NGA to show that it would use union labor and that, based on the evidence in that proceeding, it was accordingly reasonable to estimate labor costs using a “blended” mix of average union and non-union wage rates in the general private construction industry in the states where the pipeline was located, “weighted” by the length of pipe in each state.<sup>6</sup> The Commission subsequently applied the same approach in Opinion No. 524, finding that the same operator had again failed to present sufficient supporting evidence for its proposal to use union-only wage rates in its estimate of decommissioning labor costs.<sup>7</sup>

4. In this proposed policy statement, we clarify that those decisions were based on the record evidence before the Commission in those proceedings and do not reflect a heightened standard of review with respect to project-area wage rates. Under this proposal, jurisdictional entities may include wages consistent with project-area wage standards in cost-of-service rates filed with the Commission where the record supports that outcome, as discussed below.

5. Specifically, we propose that, when a Commission-jurisdictional entity presents evidence that it: (1) pays project-area wage standards, or (2) is contractually obligated to pay project-area wage standards, or (3) commits via affidavit<sup>8</sup> filed in the rate proceeding

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<sup>6</sup> *Id.*

<sup>7</sup> Opinion No. 524, 142 FERC ¶ 61,197 at PP 162-64.

<sup>8</sup> We remind filers that all information submitted in cost-of-service filings must be truthful and accurate, *see* 18 CFR 35.13(d)(6) (“A utility shall include in its filing an attestation . . . that . . . the cost of service statements and supporting data submitted . . . are true, accurate, and current representations of the utility’s books, budgets, or other corporate documents.”), 154.308 (“The filing must include a statement . . . representing that the cost statements, supporting data, and workpapers, that purport to reflect the books of the company do, in fact, set forth the results shown by such books.”), 341.1(b)(1) (“The signature on a filing constitutes a certification that the contents are true to the best knowledge and belief of the signer . . .”), and that failure to meet this requirement may

that it will pay project-area wage standards, the Commission will presume, absent contrary evidence, that such project-area wage standards are just and reasonable for the relevant labor-cost component.<sup>9</sup> Furthermore, we propose that the Commission will reject the inclusion of labor wages consistent with project-area wage standards in cost-of-service rates when the evidence demonstrates that the jurisdictional entity has not paid or will not be paying labor wages consistent with project-area wage standards.

6. We propose that the Commission will accept as sources of project-area wage standards: (1) Davis-Bacon Act local prevailing wage determinations;<sup>10</sup> (2) state prevailing wage determinations;<sup>11</sup> (3) applicable collective-bargaining agreements or Project Labor Agreements;<sup>12</sup> or (4) other evidence demonstrating the prevailing wages paid in the relevant locale(s), such as an industry-accepted database used in construction

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result in a referral to the Office of Enforcement for further investigation and action, as appropriate.

<sup>9</sup> Consistent with 48 CFR 22.401, this proposed policy statement applies to employee or contract labor whose duties are primarily manual or physical in nature, as distinguished from mental or managerial, and does not apply to employees or contractors whose duties are primarily executive, supervisory, administrative, or clerical. For purposes of this proposed policy statement, “wages” means the basic hourly pay rate including fringe benefits, as more fully defined in 48 CFR 22.401.

<sup>10</sup> Pursuant to the Davis-Bacon Act, as amended and codified at 40 U.S.C. 3141(2), the term “prevailing wages” includes the basic hourly rate of pay and fringe benefits, as determined by the Department of Labor. *See* Final Rule, 88 FR at 57526 (citing 40 U.S.C. 3142, 3145), 57531, 57546, 57699, 57722-724.

<sup>11</sup> The applicable state prevailing wage determination should meet or exceed the Davis-Bacon Act local prevailing wage determinations.

<sup>12</sup> Project Labor Agreements are agreements between building trade unions and contractors. They govern terms and conditions of employment (including wage-related issues) on a construction project for all craft workers—union and nonunion. Dep’t of Labor, *Project Labor Agreement Res. Guide, Project Labor, Cmty. Workforce, & Cmty. Benefits Agreements Res. Guide*, ¶ 1, <https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide>.

cost estimates. The Commission seeks comment on the appropriateness of the four proposed sources of project-area wage standards. In particular, we seek comment on the appropriateness of using industry databases with construction cost estimates as a source of project-area wage standards as well as whether any project-area wage standards might not be captured in the first three listed categories.

7. We further propose that jurisdictional entities seeking to include project-area wage standards in cost-of-service rates should maintain and preserve records, including books of account or records for work performed by employees, contractors or subcontractors, sufficient to demonstrate that claimed project-area wages were actually paid.<sup>13</sup>

## **II. Comment Procedures**

8. The Commission invites comments on this proposed policy statement on or before December 26, 2023. Comments must refer to Docket No. PL24-1-000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

9. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

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<sup>13</sup> See *supra* note 8.

10. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier-or other delivery services. For submission sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

### **III. Information Collection Statement**

11. The Paperwork Reduction Act and the implementing regulations of the Office of Management and Budget (OMB)<sup>14</sup> require approval of certain information collection requirements imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB Control Number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

12. This proposed policy statement clarifies how the Commission will treat the use of project-area wage standards in calculating the labor cost component of jurisdictional cost-of-service rates filed by a natural-gas company, interstate oil pipeline, or public utility, pursuant to NGA sections 4, 5 and 7, 15 U.S.C. 717c-d, 717f; ICA, 49 U.S.C. app. 1(5)(a); and FPA sections 205 and 206, 16 U.S.C. 824d-e, respectively.

13. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be

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<sup>14</sup> 5 CFR 1320.

collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

14. Please submit your comments (identified by Docket No. PL24-1-000) by either of the following methods: (1) eFiling at Commission's Web Site:

<https://www.ferc.gov/docs-filing/efiling.asp> or (2) Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852. All submissions must be formatted and filed in accordance with submission guidelines at:

<https://www.ferc.gov/help/submission-guide.asp>. For user assistance, contact FERC Online Support by e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or by phone at: (866) 208-3676 (toll-free).

15. Collection Nos., Titles and OMB Control Nos.: FERC-516 (Electric Rate Schedules and Tariff Filings, OMB Control No. 1902-0096); FERC-537 (Gas Pipeline Certificates: Construction, Acquisition and Abandonment; OMB Control No. 1902-0060); FERC-538 (Gas Pipeline Certificates: Section 7(a) Mandatory Initial Service, OMB Control No. 1902-0061); FERC-545 (Gas Pipeline Rates: Rate Change (Non-formal), OMB Control No. 1902-0154); FERC-546 (Certificated Rate Filings: Gas Pipeline Rates, OMB Control No. 1902-0155); FERC-550 (Oil Pipeline Rates - Tariff Filings and Depreciation Studies, OMB Control No. 1902-0089); FERC-555 (Preservation of Records for Public Utilities and Licensees, Natural Gas and Oil Pipeline Companies, OMB Control No. 1902-0098).

16. Action: Proposed modifications to collections of information in accordance with the proposed policy statement.



17. Respondents: The estimate of the number of respondents that may elect to use project-area wage standards in calculating the labor cost component of cost-of-service rates is based upon the existing burden inventory currently approved by OMB for filing rates cases, depreciation studies and certificate filings, include initial rates or seeking approval to charge existing rates for natural gas companies, public utilities and oil pipelines. This burden estimate is based upon one-third of the filings electing to include an additional burden by the filer to incorporate labor costs based upon paying wages that at minimum meet project-area wage standards.

18. Frequency of Information Collection: Utilities, when including elements in rates reflecting future capital costs, may elect to make the above showings in support of wages that are at or above project-area wage standards. Such proceedings may include but are not limited to certificates for new natural gas pipelines, general natural gas pipeline and electric utility rate cases, proposed new or modified depreciation rates, and proposed inclusion of asset retirement obligation in rates. In total, utilities may make such a showing one time per year.

19. Necessity of Information: The information would be necessary for the utility to receive the presumption that wages for capital projects that are at or above project-area wage standards are not just and reasonable.

20. Internal Review: The Commission has reviewed the proposed changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry in support of the Commission's ensuring just and reasonable rates. The Commission has specific, objective support for the burden

estimates associated with the information collection requirements. However, we request comments with supporting background information on the estimates for burden and cost.

21. The Commission estimates the effect of the proposed policy statement on burden<sup>15</sup> and cost<sup>16</sup> as follows:

Estimates of the Effects Due to the Proposed Policy Statement in Docket No. PL24-1-000						
A. Information Collection	B. Number of Respondents	C. Annual Number of Responses per Respondent	D. Total Number of Responses (Column B x Column C)	E. Average Burden Hrs. & Cost per Response	F. Total Annual Hr. Burdens & Total Annual Cost (Column D x Column E)	G. Cost per Respondent (Column F ÷ Column B)
FERC-1006 <sup>17</sup>						
FERC-537	22	1	22	15 hrs. \$1,440	330 hrs. \$31,680	\$1,440
FERC 516	6	1	6	15 hrs. \$1,440	90 hrs. \$8,640	\$1,440
FERC 545	11	1	11	15 hrs. \$1,440	165 hrs. \$15,840	\$1,440
FERC 555	170	1	170	1 hr. \$96	170 hrs. \$16,320	\$96
Other Affected Collections						
FERC-538	1	1	1	15 hrs. \$1,440	15 hrs. \$1,440	\$1,440
FERC-546	16	1	16	15 hrs. \$1,440	240 hrs. \$23,040	\$1,440
FERC-550	7	1	7	15 hrs. \$1,440	105 hrs. \$10,080	\$1,440

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<sup>15</sup> “Burden” is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the estimated burden, refer to 5 CFR 1320.3.

<sup>16</sup> Commission staff estimates that the respondents’ skill set (and wages and benefits) for this docket are comparable to those of Commission employees. Based on the Commission’s Fiscal Year 2023 average cost of \$199,867/year (for wages plus benefits, for one full-time employee), \$96.00/hour is used.

<sup>17</sup> The FERC 1006 is a new temporary collection number that includes the burden changes due to the proposed policy statement in the FERC-545, -537, -516, and -555, which are pending at OMB for unrelated purposes.

Estimates of the Effects Due to the Proposed Policy Statement in Docket No. PL24-1-000						
A. Information Collection	B. Number of Respondents	C. Annual Number of Responses per Respondent	D. Total Number of Responses (Column B x Column C)	E. Average Burden Hrs. & Cost per Response	F. Total Annual Hr. Burdens & Total Annual Cost (Column D x Column E)	G. Cost per Respondent (Column F ÷ Column B)
Total Effect of the Proposed Policy Statement			233		1,115 hrs. \$107,040	

#### IV. Document Availability

22. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>).

23. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

24. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By direction of the Commission.

Issued: October 19, 2023.

**Kimberly D. Bose,**

*Secretary.*

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